IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6738 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

N.M.SHAH, SUPTD. ENGINEER & 6 - Petitioners
Versus
THE SECRETARY & 2 - Respondents

==========

Appearance :
NOTICE SERVED for Petitioner(s) : 1 – 5.
NOTICE UNSERVED for Petitioner(s) : 6 - 7.
MR MD PANDYA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/01/2006

ORAL JUDGMENT

1.The petitioners, in all 7, have filed this petition under Article 226 of the Constitution of India praying for the direction to the respondent board to treat the petitioners as promoted to the post of Additional Chief Engineers with effect from the date their immediate juniors viz. respondent Nos. 2 & 3 were promoted and accord all consequential benefits like deemed date of seniority, arrears of salary, increments, further promotions etc. The petitioners have also prayed for the direction to the Board to treat the promotions of respondent Nos. 2 & 3 to the post of Additional Chief Engineer as provisional for all purposes including the one for considering them for further promotion. The petitioners have also asked for stay against the respondent authorities from further promoting respondent Nos. 2 & 3 without first considering the petitioners for promotion to the higher posts viz. Chief Engineer and above.

2.The petition was admitted by this Court on 11.04.1988 and with regard to interim relief, this Court has observed that interim relief as prayed for would almost paralyse the administration of the respondent Board and would adversely affect mainly others who are not even party to the petition. The Court has, therefore, observed that in the facts and circumstances of the case, such interim relief was not called for and balance of convenience was also not in favour of the petitioners. The Court, therefore, refused the interim relief.

3.On behalf of the respondent Board, affidavit-in-reply was filed on 21.02.1987 wherein it is stated that there were two cadres of Engineers, generally known as 'Generation' and 'Other than Generation'. The Engineers who were expert or have sufficient experience on the generation side were selected and posted in the power station on the generation side and those

engineers who have experience other than generation were selected and posted to work on the Transmission or Distribution side i.e. outside power station. If an engineer has experience only on the Transmission or Distribution side and does not possess experience on the generation side, it would not be possible for him to discharge his duties efficiently if he is posted on the generation side and vise versa. Under these circumstances, normally an Engineer entitled for promotion to the post of Chief Engineer or Additional Chief Engineer on the generation side will be promoted to that post, if there is vacancy, only if he has experience on the generation side. In the same way, an Engineer who has experience on the Transmission or Distribution side will be entitled for promotion to the post of Chief Engineer or Additional Chief Engineer in this branch if there is vacancy. It is further stated that so far as appointment orders of respondent nos. 2 & 3 are concerned,

the addendum issued clearly indicates that the promotion of these two Engineers to the posts of Additional Chief Engineer was without prejudice to the seniority of others over them. It would thus be seen that as and when vacancy arises in the branch other Generation side, the person who is entitled according to merit-cum-seniority to the post of Chief Engineer or Additional Chief Engineer, is promoted with all benefits as mentioned in the policy. It is further stated that in case of merit-cum-seniority, person's merits are required to be considered for appointment to the post. It is further stated that he may have handled particular work upto a particular stage meritoriously, but that does not mean that he is entitled for the promotion to the next higher post as he might not have adequate merit to hold that post. Therefore, the panel has to select for such posts only candidates who are suitable and meritorious.

4.The petition was filed by the learned advocate who expired during the pendency of the petition. The Court has, therefore, issued fresh notice on the petitioners. Petitioners No. 1 to 5 were already served and petitioners No. 6 & 7 were not served. Nobody appeared on behalf of the petitioners No. 1 to 5 despite service of notice. The petition is of 1986. More than 19 years have passed and still they have not pursued this matter. It, therefore, appears to the Court that the petitioners have lost all the interest in this petition. They might have given up their claim in this petition. They must have retired by now. Be that as it may, the Court is not inclined to interfere in this matter and hence, without expressing any opinion or without going into the merits of the matter, the Court disposes of this petition for want of prosecution reserving liberty to the petitioners to approach this Court in case of difficulty and if the need so arises in future.

5.Subject to the aforesaid direction and observation, this petition is accordingly disposed of. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

S*avariya*